

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
SOUTHERN DIVISION

JOSE L. MONTES, )  
                        )  
                        )  
Petitioner,         )  
                        )  
                        )  
v.                     )     CASE NO. 1:17-CV-699-WKW  
                        )     [WO]  
UNITED STATES OF     )  
AMERICA,             )  
                        )  
                        )  
Respondent.          )

**ORDER**

Before the court is Petitioner’s Motion to Withdraw 2255 (Doc. # 4). The court construes Petitioner’s motion as a notice of voluntary dismissal pursuant to Rule 41(a)(1)(A)(i) of the Federal Rules of Civil Procedure, which the court applies to this 28 U.S.C. § 2255 proceeding pursuant to Rule 12 of the Rules Governing Section 2255 Proceedings for the United States District Courts. Because Respondent has yet to file “either an answer or a motion for summary judgment,” Petitioner “may dismiss [this] action without a court order.” Fed. R. Civ. P. 41(a)(1)(A)(i). Although Petitioner currently believes that “it seems pointless to even try” to pursue the claim he makes in this action (Doc. # 4, at 1), he has not clearly indicated any desire for the dismissal he requests to be with prejudice. Therefore, Petitioner’s voluntary dismissal is without prejudice. Fed. R. Civ. P. 41(a)(1)(B).

This action has thus been dismissed by operation of Rule 41(a)(1).

Accordingly, the Clerk of the Court is DIRECTED to close this case.

DONE this 16th day of November, 2017.

/s/ W. Keith Watkins

CHIEF UNITED STATES DISTRICT JUDGE